CONFIDENTIAL

DEPARTMENT OF STATE

BRIEFING PAPER

DECLASSIFIED

R (7)

ARMS TRANSFER POLICY

Issue

This paper deals with policy relating to the sale and transfer of arms, not to security assistance programs. There are major issues concerning arms transfer policy, including the direction and scope of arms transfers, policy and management controls, and Congressional involvement. Given the importance of arms transfers both in foreign policy and in economic/commercial terms, the Congress, industry, and allied and friendly nations will be looking for early indications from the new Administration of what the US approach will be on these issues.

US Interests

Arms transfers are a key component of our foreign policy serving a wide range of US interests, including:

-- support of bilateral US relations with recipient nations;

-- limit Soviet influence and maintain conventional balances;

-- secure base rights, overseas facilities, and access and transit rights to support the deployment and operations of US forces and intelligence systems;

-- help maintain regional balances among nations important to us in order to avert war or political shifts away from us;

-- promote self-sufficiency in deterrence and defense as a stabilizing factor in itself and as a means of reducing the level and automaticity of possible American involvement;

-- strengthen the internal security and stability of recipients; and

-- facilitate US diplomatic mediation efforts by enhancing the parties' sense of security.

At the same time we have a fundamental interest in shaping a policy and managing arms transfers in a manner that addresses the dangers of:

-- the destabilization of regional balances and arms build-ups;

-- intensification of the potential for and level of hostilities, and diminution of interest in peaceful resolution of conflict;

-- overloading of absorptive capacities of recipient nations;

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY [signature] DATE 6/7/83
RDS☐or XDS☐EXT. DATE
AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED☒ RELEASABLE☒
RELEASE DENIED☐
PA or FOI EXEMPTIONS

-- dispersion of sensitive technology that could be compromised or used against us or our allies should political circumstances change; and

-- diversion of destructive weapons to terrorists.

Because of the consequences for our foreign policy, the USG requires an arms transfer policy framework that, both substantively and managerially, ensures that major arms transfer decisions are made by responsible senior officials based on their assessment of all US interests at stake. Whether and to what extent arms transfers serve broader US interests depend on the adequacy of the general framework as well as case-by-case decision-making.

Broad Trends in Arms Transfers

Arms sales tend to follow cyclical patterns. In the 1972-76 period the worldwide demand for arms increased measurably, spurred by sales to oil-rich Middle Eastern and Persian Gulf nations. US sales jumped dramatically during this period, with agreements to Saudi Arabia and Iran exceeding $15 billion and $10 billion respectively, and those to Israel reaching almost $5 billion. Countries like Libya, Iraq, Syria and India made large purchases from the USSR and other suppliers. Essentially, however, the US was perceived to be by far the largest seller of arms to LDCs. (Chart at Annex A.)

Since 1976, total transfers to LDCs from all suppliers in current dollars, have increased moderately with the US portion declining in relative terms. Soviet and West European sales have risen substantially, the latter due in part to intense promotional efforts.

Total US sales, including those to developed nations, peaked in 1975-76. Following a decline in 1977, the subsequent gradual return to the 1975-76 levels reflects inflation and masks a sharp decline in transfers to LDCs, particularly the termination of future sales to Iran and cancellation of many past orders. Other factors are increases to our NATO allies, Japan, and Australia, the start of the Egyptian modernization program, and continued large sales to Saudi Arabia. FY 1980 sales activity reached a level of $15.2 billion influenced by large Saudi construction programs and a $2.5 billion agreement with the UK for the Trident system, a ten-year program requiring conclusion of most of the contracts at the initial stage.

In constant dollars, US sales declined over 1976-80. Moreover, about 40 percent of US sales comprise support, services, and construction, a much larger percentage than other major suppliers. (Our ability to measure with any degree of accuracy the exports of others in these categories is limited.) In terms of weapons actually delivered to LDCs, the USSR led the US in virtually all significant categories during the 1977-79 period. (Chart at Annex B.)

Legal and Congressional Bases

Arms transfers are authorized and regulated by law. The law authorizes the President to make arms sales and control the commercial export of arms.

The Secretary of State, under the President's direction, is responsible "for the continuous supervision and general direction" of arms sales and exports. Several formal controls in the current policy, as well as other aspects of the decision-making process, are mandated in legislation:

-- legal requirement for USG approval, reports to Congress, and possible Congressional veto of third party transfers of US-origin defense articles;

-- requirement that human rights be taken into account in making arms transfer decisions;

-- policy statement that sales having a significant adverse effect on the combat readiness of US forces be kept to an absolute minimum, with a report to Congress required in any such cases;

-- requirement for a report to Congress on proposed coproduction agreements involving US funds giving the impact of the project on US employment; and

-- requirements that the Arms Control and Disarmament Agency (ACDA) be involved in arms transfer decisions and that arms control impact statements be part of the annual requests for security assistance.

Since 1974 Congressional interest in arms transfers has grown significantly, and successive amendments have increased direct Congressional participation in the process. Since then, for example, all sales involving major defense equipment for $7 million or more or any defense articles or services for $25 million or more must be submitted to Congress for review, and possible disapproval.

Current Policy

Current arms transfer policy applies to all transfers of US defense equipment, services, and technology. Most are consummated under the Foreign Military Sales (FMS) program, i.e., through government-to-government channels. Other transfers are realized either under the declining grant Military Assistance Program (MAP) or on a commercial basis, i.e., from US industry to a foreign recipient under Munitions Control licensing procedures.

A major objective of the present Administration's arms transfer policy established in May 1977, also reflecting strong Congressional concern at that time, was that the US take a first step toward greater worldwide restraint. The policy contained these elements:

-- six qualitative controls governing all sales unless excepted by the President;

-- an annual quantitative ceiling on weapons and weapons-related transfers (except on commercial sales) as a yardstick against which to measure progress toward restraint;

-- exemption of major allies -- NATO, Australia, Japan, and New Zealand -- from both sets of controls (Israel was mentioned in terms of the US honoring its historic responsibilities to Israel's security, but was not exempted); and

-- an attempt to seek multilateral cooperation.

Issues

There follows major policy issues which will face the new Administration as it formulates its own arms transfer policy.

1. Ceiling: The ceiling as a policy instrument has become progressively irrelvant. In its first two years, successive eight percent reductions were imposed, but with the Soviet invasion of Afghanistan and the lack of multilateral cooperation, there was no reduction in FY 1980. Whether to have an FY 1981 ceiling has been deferred until the new Administration, but there is consensus among agencies that the ceiling is no longer useful and should be eliminated.

2. Qualitative Controls: These controls are restrictions on: (1) being the first supplier to introduce advanced weapons into a region; (2) transferring weapons before they are operationally deployed with US forces; (3) developing or modifying advanced weapons solely for export; (4) transfers to third parties; (5) coproduction of significant equipment; and (6) actions by USG personnel or manufacturers promoting the sale of arms abroad.

These controls, deriving in part from law and past practice, serve primarily as guidelines in the analysis of potential transfers. The President has granted exceptions when necessary to permit transfers promoting US interests that otherwise would be prohibited by these controls. There is consensus among agencies that the policy should be reviewed given the changed global atmosphere, shifting regional environments, and Soviet challenges to US interests. The restrictions on sales promotion and coproduction have been identified for possible review, the former due especially to increasing marketing activities by other suppliers and the latter because of increasing requests for coproduction and the long term impact of technology transfers on our economic and security interests.

3. Multilateral Cooperation: In 1977 the US began discussions with other major suppliers, particularly the USSR, to explore possibilities for cooperative restraint. These efforts were not successful. The last of a series of US-USSR conventional arms transfer (CAT) talks were held in December 1978. Since 1979, the multilateral cooperation initiative has not been pursued and is not an active issue.

4. Exemptions: If the current pattern of controls is maintained, the exemption of our closest allies -- NATO, Australia, Japan, and New Zealand -- from the present policy's controls should remain in recognition of our common strategic interests and the depth of our cooperation in many areas. Other friends such as Spain, a treaty partner, Sweden and Switzerland may continue to complain of unequal treatment, though we tend to meet most of their requests. That said, it would be difficult, however, to develop

criteria for expanding the list of exempt countries that would not be so broad as to undermine the effect and application of the policy.

5. Transfer of Sensitive Technology: The obvious benefits of transfers of the advanced equipment and technology which many nations want must be weighed against the dangers to our own security if the equipment is compromised through lax security controls or political change, e.g., Iran. Release of advanced equipment is an issue, particularly with countries such as Sweden and Switzerland which desire our most advanced missiles such as the AIM-9L and Stinger. Efforts to improve defense cooperation with Yugoslavia run up against Yugoslav requests for some of our more advanced technology. The question of sensitive technology transfers is an issue not only within the Executive Branch but also with key Congressional committees. It should, therefore, be reviewed by the incoming Administration.

6. RSI, Offsets, and Coproduction: Efforts to enhance NATO arms cooperation through the codevelopment of families of weapons and coproduction of other systems raise serious issues. The Europeans have exhibited some reluctance, in part because of US limitations on the transfer of selected sensitive technology and legal controls over third party transfers. They believe they must sell coproduced and codeveloped weapons to non-NATO markets to justify initial investment and viable industries. They want us to permit transfer of this equipment to countries where we would not ourselves make sales due to policy or statutory restraints.

More generally, many of our arms partners are no longer content to purchase all their defense articles abroad. The most industrially advanced can produce almost the full range of military equipment and desire from the US only the most advanced systems and the technology to manufacture them. LDCs want to meet at least a portion of their arms needs domestically even at a cost exceeding direct purchase. Consequently, over the past several years, requests for US technology or for involvement in coproduction have increased markedly.

Increasingly in major arms sales to allies the American seller is required to undertake commitments to provide significant offsets, often involving production or purchase of goods not directly related to the equipment being sold. These tied arrangements, on occasion exceeding $1 billion, can impact on broad US economic interests and distort normal trade patterns on a major scale.

Coproduction covers a wide spectrum of design, development, assembly, and production skills. Most of the policy exceptions granted by President Carter have been for coproduction, especially for non-sensitive equipment. Problems may arise, however, when (1) the USG is asked to help finance coproduction if the cost is higher than direct procurement, (2) the project is economically viable only through subsequent export sales, (3) the US is simultaneously providing economic assistance, or (4) an industrialized country will cooperate in a codevelopment project only if we ease our third party transfer controls.

US defense manufacturers prefer to sell directly, but will favor coproduction if the alternative is no sale at all. Long term economic benefits can accrue

to the firm involved in coproduction. However, other firms selling the same generic articles are effectively eliminated from competing in that foreign market. The spread of US technology may over time create future economic competition as a result of spinoffs from transferred technology. The US approach to coproduction and technology transfers requires a general review given the important political, security and economic issues at stake.

7 Sales Promotion: Current policy prohibits USG personnel or private corporations from promoting the sale of arms without specific policy approval. Corporations must obtain favorable advisory opinions before making major sales presentations. US overseas personnel cannot assist these firms, even with a favorable advisory opinion, because USG approval of an eventual sale is not guaranteed. US industry strongly resents this restriction because other supplier governments actively support sales not conflicting with their foreign policy interests. In fact, many European aircraft industries are government controlled.

It is generally agreed among agencies that restrictions on USG assistance to manufacturers in the case of favorable advisory opinions should be modified recognizing the importance of preserving USG options regarding final sales approval.

8. Program Management: The present Administration established the interagency Arms Export Control Board (AECB), chaired by the Under Secretary of State for Security Assistance, Science and Technology, to act as an advisory mechanism on arms transfers. The AECB itself meets periodically and serves primarily as an interagency sounding board. Actual management of arms transfers is carried out by working level mechanisms, under the aegis of the AECB, that provide the interagency coordination on specific cases. Major issues are sent to the Secretary and, as necessary, to the President for decision. In this Administration the President has reserved for himself the right to decide all major transfers to non-exempt countries and to grant exceptions to the controls.

Despite original concerns that the AECB process might be cumbersome, it has proved to be more flexible than anticipated since the actual day-to-day business has remained in well-established interagency channels. It has permitted a number of concerned agencies to participate while keeping policy direction in the hands of the Secretary of State with the other key actors, DOD, NSC, and ACDA, playing their appropriate roles.

9. Congressional Involvement: Congressional interest in arms sales restraint as a general goal has waned as multilateral cooperation on restraint appeared less attainable and events have produced a more confrontational world situation. At the same time there is continuing Congressional concern that the sale of advanced and sensitive weapons be carefully controlled because of possible compromise of state-of-the-art US systems and technology, and the impact of this equipment on particular regional balances, most notably the Middle East. While Congress has never vetoed a proposed sale, it has on several occasions raised serious objections which compelled the Administration to modify or hold up submission of a proposal in the face of Congressional criticism.

Administration efforts in FY 1981 to ease legislated restraints on Presidential flexibility regarding arms transfers were partially successful -- most notably, the broadening of the Presidential waiver authority -- and we are currently formulating legislative initiatives for FY 1982. However, Congressional concerns about assuring itself an oversight role remain strong and the Executive Branch efforts to secure greater flexibility have been a difficult uphill struggle.

Annex A

ARMS SALES TO THIRD WORLD, BY SUPPLIER[1]
(In Millions of Current U.S. Dollars)

	1974	1975	1976	1977	1978	1979
Total	23,521	22,329	21,394	27,356	24,198	29,978
Non-Communist	16,581	17,979	14,254	17,606	20,458	19,258
Of which:						
United States	11,921	11,614	10,669[2]	9,976	11,268	10,388
France	2,030	2,300	1,025	2,800	2,500	4,000
United Kingdom	760	1,400	630	1,550	1,800	2,420
Germany	725	790	360	1,170	2,220	400
Italy	425	990	220	960	1,360	360
Other Free World	720	885	1,350	1,150	1,310	1,690
Communist	6,940	4,350	7,140	9,750	3,740	10,720
Of which: U.S.S.R.	(5,900)	(3,600)	(5,900)	(9,000)	(2,900)	(9,800)
Dollar inflation index (100 = 1974)	100	109	118	127	136	148

SOURCE: SFRC Report based on intelligence community data.

[1] Foreign data is for the calendar year given. U.S. data is for the fiscal year given (and covers the period from July 1, 1973, through Sept. 30, 1979). Statistics shown for foreign countries are based upon the estimated selling prices. Prices given include sale of weapons, construction, military assistance, and spare parts. Third World category excludes Warsaw Pact, NATO countries, Europe, Japan, Australia, and New Zealand. All data is current as of Jan. 1, 1980, and reflects termination of all sales contracts other than Iran. The value of Iranian contracts which were cancelled by Fiscal Year are as follows: Fiscal Year 1974 ($359,000,000); Fiscal Year 1975 ($1,133,000,000); Fiscal Year 1976 and transition quarter ($206,000,000); Fiscal Year 1977 ($2,478,000,000); Fiscal Year 1978 ($1,823,000,000); Fiscal Year 1979 (0).

[2] U.S. figures excludes $2,667,000,000 which represents the transition quarter for Fiscal Year 1976.

UNCLASSIFIED

tributions paid, or offered, or agreed to be paid in connection with the sales of defense articles or defense services; (2) a detailed annual report to Congress on all exports by country; and (3) notification to Congress prior to issuance of license or approvals for export of Major Defense Equipment sold commercially under a contract of $ 7 Million or more, other defense articles valued at $ 25 Million or more, and commercial agreements for the overseas manufacture of significant combat equipment in or for a non-NATO country.

PM/MC is responsible for enforcement of export regulations and receives reports on possible violations from a variety of USG, industry, news media and public sources. The U. S. Customs Service in the Department of Treasury conducts all investigations for PM/MC and the Department of Justice prosecutes cases when appropriate. In addition to criminal penalties, PM/MC can and does use Hearing Examiners in the Department of Commerce as a method of assessing civil penalties.

Finally, PM/MC provides the Department of State representative to the National Disclosure Policy Committe.

Arms transfers, FMS and commercial, are a distinct instrument of foreign policy and PM/MC works in close coordination with PM/SAS (the Office of Security Assistance and Sales) which is responsible for FMS policy. PM/MC judges applications on the basis of applicable statutes, the ITAR, USG policies originating with the President (e.g., PD-13) and the Secretary

UNCLASSIFIED

Annex B

Deliveries to the Third World (1977 - 1979)

Ground	U.S.	USSR	Major West European
Tanks and SP Guns	2,086	5,265	785
Artillery	795	2,535	465
Armored Vehicles	6,957	5,035	1,740
Naval			
Major Surface Combatants	16	2	12
Minor Surface Combatants	28	85	60
Submarines	1	4	8
Guided Missile Boats	—	38	17
Air			
Supersonic Combat Aircraft	456	1,280	160
Subsonic Combat Aircraft	131	255	2
Helicopters	150	530	520
Other Aircraft	223	185	275
Missiles			
Surface-to-Air	4,476	4,625	55

SOURCE: SFRC Report based on intelligence community data.

DECLASSIFIED